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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 5553

**KERN MEDICAL CENTER DBA  
SAGEBRUSH MEDICAL PLAZA  
PHARMACY  
1111 Columbus Avenue  
Bakersfield, CA 93305**

**A C C U S A T I O N**

**Hospital Pharmacy Permit No. PHE 40876,**

**ANGELA MARIE TORRES  
11501 Valley Forge Way  
Bakersfield, CA 93312**

**Pharmacist License No. RPH 55644,**

**and**

**ANIECE LOUISE AMOS  
555 Fairbanks St.  
Corona, CA 92879**

**Pharmacist License No. RPH 36840**

Respondents.

Complainant alleges:

**PARTIES**

1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about August 18, 1995, the Board of Pharmacy ("Board") issued Hospital Pharmacy Permit Number PHE 40876 to Kern Medical Center dba Sagebrush Medical Plaza Pharmacy ("Respondent Pharmacy"). The Hospital Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on November 1, 2015, unless renewed.

3. On or about July 12, 2004, the Board issued Pharmacist License Number RPH 55644 to Angela Marie Torres ("Respondent Torres"). Between May 1, 2013 and September 11, 2014, Respondent Torres was the Pharmacist-in-Charge of Respondent Pharmacy. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

4. On or about January 25, 1982, the Board issued Pharmacist License Number RPH 36840 to Aniece Louise Amos ("Respondent Amos"). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

## JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

7. Section 4300 of the Code states, in pertinent part:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper."

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## **STATUTES AND REGULATIONS**

8. Section 4301 of the Code states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

• • • •

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

• • • •

9. Section 4105 of the Code states:

"(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

"(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

"(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

"(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records

maintained electronically.

"(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

"(e)(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter."

10. California Code of Regulations, title 16, section 1713 states:

"(a) Except as otherwise provided in this Division, no licensee shall participate in any arrangement or agreement, whereby prescriptions, or prescription medications, may be left at, picked up from, accepted by, or delivered to any place not licensed as a retail pharmacy.

"(b) A licensee may pick up prescriptions at the office or home of the prescriber or pick up or deliver prescriptions or prescription medications at the office of or a residence designated by the patient or at the hospital, institution, medical office or clinic at which the patient receives health care services. In addition, the Board may, in its sole discretion, waive application of subdivision (a) for good cause shown.

"(c) A patient or the patient's agent may deposit a prescription in a secure container that is at the same address as the licensed pharmacy premises. The pharmacy shall be responsible for the security and confidentiality of the prescriptions deposited in the container.

"(d) A pharmacy may use an automated delivery device to deliver previously dispensed prescription medications provided:

"(1) Each patient using the device has chosen to use the device and signed a written consent form demonstrating his or her informed consent to do so.

"(2) A pharmacist has determined that each patient using the device meets inclusion criteria for use of the device established by the pharmacy prior to delivery of prescription medication to the patient.

"(3) The device has a means to identify each patient and only release that patient's prescription medications.

"(4) The pharmacy does not use the device to deliver previously dispensed prescription medications to any patient if a pharmacist determines that such patient requires counseling as set forth in section 1707.2(a)(2).

"(5) The pharmacy provides an immediate consultation with a pharmacist, either in-person or via telephone, upon the request of a patient.

"(6) The device is located adjacent to the secure pharmacy area.

"(7) The device is secure from access and removal by unauthorized individuals.

"(8) The pharmacy is responsible for the prescription medications stored in the device.

"(9) Any incident involving the device where a complaint, delivery error, or

omission has occurred shall be reviewed as part of the pharmacy's quality assurance program mandated by Business and Professions Code section 4125.

"(10) The pharmacy maintains written policies and procedures pertaining to the device as described in subdivision (e).

"(e) Any pharmacy making use of an automated delivery device as permitted by subdivision (d) shall maintain, and on an annual basis review, written policies and procedures providing for:

"(1) Maintaining the security of the automated delivery device and the dangerous drugs within the device.

"(2) Determining and applying inclusion criteria regarding which medications are appropriate for placement in the device and for which patients, including when consultation is needed.

"(3) Ensuring that patients are aware that consultation with a pharmacist is available for any prescription medication, including for those delivered via the automated delivery device.

"(4) Describing the assignment of responsibilities to, and training of, pharmacy personnel regarding the maintenance and filing procedures for the automated delivery device.

"(5) Orienting participating patients on use of the automated delivery device, notifying patients when expected prescription medications are not available in the device, and ensuring that patient use of the device does not interfere with delivery of prescription medications.

"(6) Ensuring the delivery of medications to patients in the event the device is disabled or malfunctions.

"(f) Written policies and procedures shall be maintained at least three years beyond the last use for an automated delivery device.

"(g) For the purposes of this section only, 'previously-dispensed prescription medications' are those prescription medications that do not trigger a non-discretionary duty to consult under section 1707.2(b)(1), because they have been previously dispensed to the patient by the pharmacy in the same dosage form, strength, and with the same written directions."

11. California Code of Regulations, title 16, section 1717.4 states:

"(a) Except as otherwise prohibited by law, prescriptions may be transmitted by electronic means from the prescriber to the pharmacy.

"(b) An electronically transmitted prescription which meets the requirements of this regulation shall be deemed to be a prescription within the meaning of Business and Professions Code section 4040.

"(c) An electronically transmitted prescription order shall include the name and address of the prescriber, a telephone number for oral confirmation, date of transmission and the identity of the recipient, as well as any other information required by federal or state law or regulations. The prescriber's address, license classification and federal

registry number may be omitted if they are on file and readily retrievable in the receiving pharmacy.

"(d) An 'interim storage device' means as electronic file into which a prescription is entered for later retrieval by an authorized individual. Any interim storage device shall, in addition to the above information, record and maintain the date of entry and/or receipt of the prescription order, date of transmission from the interim storage device and identity of the recipient of such transmission. The interim storage device shall be maintained so as to ensure against unauthorized access and use of prescription information, including dispensing information.

"(e) A pharmacy receiving an electronic image transmission prescription shall either receive the prescription in hard copy form or have the capacity to retrieve a hard copy facsimile of the prescription from the pharmacy's computer memory. Any hard copy of a prescription shall be maintained on paper of permanent quality.

"(f) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice. This requirement shall not apply to orders for medications to be administered in an acute care hospital.

"(g) Electronic equipment for transmitting prescriptions (or electronic transmittal technology) shall not be supplied or used so as to violate or circumvent Business and Professions Code section 4000 et seq., Health and Safety Code section 11150 et seq., or any regulations of the board.

"(h) Any person who transmits, maintains or receives any prescription or prescription refill, orally, in writing or electronically, shall ensure the security, integrity, authenticity, and confidentiality of the prescription and any information contained therein."

### **COST RECOVERY**

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

### **RELEVANT BACKGROUND FACTS**

13. In April 2013, Respondent Amos, who was then the Director of Pharmacy for Kern Medical Center, had multiple communications with a Board Inspector regarding the propriety of a delivery service delivering medications from a pharmacy to a central location that was not a licensed pharmacy. Kern County was looking for a way to deliver medications from Kern Medical Center's two outpatient pharmacies, i.e., Respondent Pharmacy and Kern Medical Center Campus Pharmacy, to Kern County employees who received insurance through the Kern Legacy Health

1 Plan. On April 19, 2013, the Board Inspector advised Respondent Amos that there was no  
2 pharmacy law that allowed for this conduct without a waiver from the Board of Pharmacy.

3 14. Despite the admonishment from the Board Inspector, in July 2013, Respondent Amos  
4 sent an internal email in which she stated that the "current practice of having a courier deliver to  
5 the downtown site is allowed – no exception required. Having our clients pick up their  
6 prescriptions from the courier is allowed – no exception required."

7 15. In August 2014, the Board Inspector learned for the first time that in July 2013, the  
8 Kern Legacy Health Plan had established a prescription medication pick-up and drop-off location  
9 for its members operated by Kern Medical Center at the County Administration Building located at  
10 1115 Truxtun Avenue in Bakersfield, California.

11 16. On August 11, 2014, the Board Inspector sent an email to the Kern Legacy Health  
12 Plan stating that Respondent Amos had been advised that the pharmacy law did not permit the  
13 delivery of medication to the location in question.

14 17. On August 12, 2014, Kern County Interim Senior Outpatient Pharmacist Jeremiah  
15 Joson responded to the Board Inspector. Mr. Joson indicated that he believed that the Board had  
16 given Kern Medical Center permission to run the delivery service, but he was unable to produce  
17 any evidence of such permission. Mr. Joson stated that the delivery service operated by having  
18 either Respondent Pharmacy or Kern Medical Center Campus Pharmacy send a pharmacy  
19 technician to the County Administration Building to meet a patient and the deliver the medication.

20 18. On August 15, 2014, the Board Inspector spoke on the phone with Kern Medical  
21 Center Chief Operating Officer Jared Leavitt. Mr. Leavitt described the delivery service as only  
22 for employees of the County Administration Building. He further explained that there was an  
23 office location staffed with a pharmacy technician and that patients would pick up medications at  
24 scheduled times, which had been coordinated by the pharmacy technician. He also stated that the  
25 pharmacy technician faxed prescriptions from that office to either Respondent Pharmacy or Kern  
26 Medical Center Campus Pharmacy.

27 19. Also on August 15, 2014, the Board Inspector visited the location at the County  
28 Administration Building where the pick-ups and drop-offs occurred. The Inspector observed an

1 office with a glass front with the signage "Kern Legacy Health Plan." There was a pharmacy  
2 technician in the check-in area of the office. The technician indicated that patients would complete  
3 a "Patient Intake Form" which authorized either Respondent Pharmacy or Kern Medical Center  
4 Campus Pharmacy to deliver filled prescriptions to the site. The technician would also schedule  
5 delivery times and the delivery person would give the filled prescriptions one at a time to the  
6 patients in the office area. The technician would also accept hard copies of prescriptions and fax  
7 the prescriptions to either of the two pharmacies. She would store the prescriptions in a locked  
8 "bank bag" until they were picked up by the pharmacies. The technician indicated that any Kern  
9 Legacy Health Plan member could use the delivery service, not just people who worked at the  
10 County Administration Building, as Mr. Leavitt had indicated.

11 20. While the Board Inspector was visiting the Kern Legacy Health Plan Office, she  
12 observed numerous pharmacy records that were stored in the office. The Board Inspector  
13 searched a three drawer unlocked file cabinet and counted 1660 records of transactions, including  
14 995 copies of prescriptions. Records for Respondent Pharmacy included copies of new  
15 prescriptions for controlled substances, requests for transfers of prescriptions, and a copy of a  
16 facsimile cover sheet to Respondent Pharmacy from "KLHP Pharmacy" (Kern Legacy Health Plan  
17 Pharmacy, which is an unlicensed entity).

18 21. On September 15, 2014, the Board Inspector received a statement from Respondent  
19 Amos in which she acknowledged that she developed the plan to create the Kern Legacy Health  
20 Plan Office at the County Administration Building and the prescription pick-up and drop-off  
21 service.

### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Unauthorized Receipt and Delivery of Prescriptions and Prescription Medication)**

24 22. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
25 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
26 of Regulations, title 16, section 1713, subdivision (a), on the grounds of unprofessional conduct in  
27 that Respondent Amos created a central delivery to an unlicensed location in the Kern Legacy  
28 Health Plan Office, located at 1115 Truxtun Avenue in Bakersfield, California. Between July 2013



1 and August 2014, Respondent Pharmacy delivered prescriptions to Kern Legacy Health Plan  
2 members, who picked up their prescriptions at an assigned time at the Kern Legacy Health Plan  
3 Office, which was not licensed as a retail pharmacy. The Kern Legacy Health Plan Office also  
4 accepted and received original prescriptions brought in by patients and faxed the prescriptions to  
5 Respondent Pharmacy. The original prescriptions were kept at the Kern Legacy Health Plan  
6 Office until they were delivered to Respondent Pharmacy. The Kern Legacy Health Plan Office  
7 also faxed copies of patient prescription and patient profiles from other pharmacies to Respondent  
8 Pharmacy with a request for a prescription transfer. Respondent Torres was the PIC of  
9 Respondent Pharmacy while this conduct occurred. Respondent Amos created the pickup and  
10 delivery process at the Kern Legacy Health Plan Office. Complainant incorporates by reference  
11 Paragraphs 13 through 21 as though fully set forth herein.

## 12 **SECOND CAUSE FOR DISCIPLINE**

### 13 **(Unauthorized Deposit of Prescription)**

14 23. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
15 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
16 of Regulations, title 16, section 1713, subdivision (c), on the grounds of unprofessional conduct in  
17 that Respondent Pharmacy established a process whereby prescription documents were deposited  
18 at the Kern Legacy Plan Health Office, which is an unsecured, unlicensed location, and then the  
19 prescriptions were accepted by Respondent Pharmacy as valid prescriptions. Respondent Torres  
20 was the PIC of Respondent Pharmacy while this conduct occurred. Respondent Amos created and  
21 established this process. Complainant incorporates by reference Paragraphs 13 through 21 as  
22 though fully set forth herein.

## 23 **THIRD CAUSE FOR DISCIPLINE**

### 24 **(Unauthorized Electronic Transmission of Prescriptions)**

25 24. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
26 disciplinary action under Code section 4301, subdivision (o), in conjunction with California Code  
27 of Regulations, title 16, section 1717.4, subdivision (a), on the grounds of unprofessional conduct  
28 in that Respondent Pharmacy established an unlicensed, off-site location at the Kern Legacy Health

1 Plan Office, which faxed hard copies of physician prescriptions to Respondent Pharmacy.  
2 Respondent Torres was the PIC of Respondent Pharmacy while this conduct occurred.  
3 Respondent Amos created the pickup and delivery process at the Kern Legacy Health Plan Office.  
4 Complainant incorporates by reference Paragraphs 13 through 21 as though fully set forth herein.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Storage of Pharmacy Records at an Unlicensed Location)**

7 25. Respondent Pharmacy, Respondent Torres, and Respondent Amos are subject to  
8 disciplinary action under Code section 4301, subdivision (o), in conjunction with Code section  
9 4105, subdivision (a), on the grounds of unprofessional conduct in that Respondent Pharmacy  
10 retained records of acquisition and disposition of dangerous drugs at an unlicensed location, the  
11 Kern Legacy Health Plan Office. Respondent Torres was the PIC of Respondent Pharmacy while  
12 this conduct occurred. Respondent Amos created and established this process. Complainant  
13 incorporates by reference Paragraphs 13 through 21 as though fully set forth herein.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Hospital Pharmacy Permit Number PHE 40876, issued to  
18 Kern Medical Center dba Sagebrush Medical Plaza Pharmacy;

19 2. Revoking or suspending Pharmacist License Number RPH 55644, issued to Angela  
20 Marie Torres;

21 3. Revoking or suspending Pharmacist License Number RPH 36840, issued to Aniece  
22 Louise Amos;

23 4. Ordering Kern Medical Center dba Sagebrush Medical Plaza Pharmacy, Angela Marie  
24 Torres, and Aniece Louise Amos to pay the Board of Pharmacy the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3; and,

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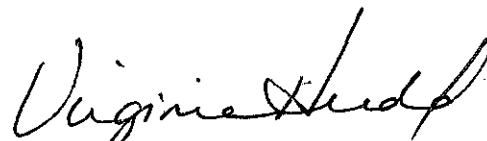
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5. Taking such other and further action as deemed necessary and proper.

DATED:

5/4/16



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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